

## Expert Conference: The Meaning and Implementation of Victim Orientation in the Treaty Bodies of the United Nations; Berlin, 29-30 September 2014

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# The Meaning and Implementation of Victim Orientation in the Treaty Bodies of the United Nations

Berlin, 29–30 September 2014



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# Imprint

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## The German Institute for Human Rights

The German Institute for Human Rights is Germany's independent National Human Rights Institution. It contributes to protecting and promoting human rights. The Institute promotes the integration of human rights into domestic and foreign policy decisions and monitors the implementation of international human rights obligations in and by Germany. The Institute is a non-profit association and politically independent. The Board of Trustees, composed of 18 members, defines the framework and sets thematic priorities for the Institute. It is comprised of representatives from politics, academia, civil society and the media. The Institute is financed by the German Federal Ministry of Justice and Consumer Protection, the Federal Foreign Office, the Federal Ministry for Economic Cooperation and Development, and the Federal Ministry of Labour and Social Affairs as well as by external funds.

## The Nuremberg Human Rights Center

The Nuremberg Centre for Human Rights (NMRZ) is an independent, non-profit association which is supported exclusively by the voluntary work of active members of the association. The NMRZ advocates at local, national and international level for human rights. It is an active member in the German Human Rights Network "Forum Human Rights". The NMRZ monitors the German human rights policy, advocates for human rights towards political decision makers and supports local, national and international campaigns to protect human rights. It provides regular publications on human rights and is the editorial office of the "Journal of Human Rights (zfmr)".



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Documentation

## Expert Conference

The Meaning and Implementation of  
Victim Orientation in the Treaty Bodies  
of the United Nations

Berlin, 29–30 September 2014



## Preface

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Victims of human rights violations are increasingly in the focus of international instruments for the protection of human rights. The most recent of the core international human rights treaties, the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), is exemplary in its victim orientation: it defines victims as subjects of a series of rights. What is lacking is both knowledge and capacity among both human rights experts as well as by stakeholder organizations on how to implement the principles of victim orientation.

On 29 and 30 September 2014, members of United Nations Treaty Bodies and Special Procedures, independent experts, and representatives of non-governmental human rights organizations from Africa, Asia, the Americas and Europe met in Berlin at the invitation of the German Institute for Human Rights and the Nuremberg Centre for Human Rights for the expert conference "The Meaning and Implementation of Victim Orientation in the Treaty Bodies of the United Nations". Funding for the conference was kindly provided by the Federal Foreign Office.

Participants discussed the meaning and implementation of the principles of victim orientation in different international institutions and organisations concerned with the protection of human rights. The participants developed recommendations addressed to the Treaty Bodies and Special Procedures of the United Nations, the Office of the High Commissioner for Human Rights, National Human Rights Institutions, civil society organizations and other actors in the human rights landscape on how to implement the principles of victim orientation. The present documentation provides a brief historical overview of the development of victim orientation in the United Nations system, a summary

of the conference discussions, the developed recommendations and the conference program.

This conference continued a discussion started in April 2012, when the German Institute for Human Rights, the Nuremberg Human Rights Centre and the University of Erlangen-Nuremberg co-hosted an international conference on enforced disappearances in Berlin. That conference explored the innovative aspects of the CPED, including its provisions for a more victim-oriented approach. In 2014, human rights experts widened the debate: How can victims occupy a central place in the search for truth, justice and reparations? Who is considered a victim of human rights violations by the different human rights bodies? Who are legitimate representatives to defend their rights before international bodies? Are international human rights bodies accessible to victims and what are the rules and procedures of these bodies to receive and process victims' claims? How do victims fare regarding information channels and interaction with international courts? And finally: What are the limits and comparative advantages of those different bodies?

These and other aspects were discussed at the conference and are presented in this documentation. Of particular importance are the recommendations that have been elaborated within the framework of the Conference. We hope that these recommendations will contribute to the enhancement of victim orientation in the international human rights system.

Professor Dr. Beate Rudolf  
Director of the German Institute for Human Rights

Dr. Rainer Huhle  
Nuremberg Human Rights Centre



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# 1 Conference Programme

## VICTIM ORIENTATION

1

### EXPERT CONFERENCE

"The Meaning and Implementation of Victim Orientation  
in the Treaty Bodies of the United Nations"

29–30 SEPTEMBER 2014

Landesvertretung Bremen  
Hiroshimastraße 24  
10785 Berlin

#### How to get there:

[www.landesvertretung.bremen.de/sixcms/detail.php?gsid=bremen60.c.1390.de](http://www.landesvertretung.bremen.de/sixcms/detail.php?gsid=bremen60.c.1390.de)

### MONDAY · 29 SEPTEMBER

09:30 · REGISTRATION

10:00–10:30 · WELCOMING ADDRESSES

- > **Beate Rudolf** · Director, German Institute for Human Rights
- > **Martin Huth** · Head of Division for International Human Rights Protection; German Ministry of Foreign Affairs

10:30–11:15 · KEY NOTE

"How victims became subjects in the UN"

- > **Theo van Boven** · Professor emeritus of international Law at University of Maastricht; former Director of UN-Division for Human Rights.

Introduction: "Victims orientation in the international system of  
HR protection: From rhetoric towards reality?"

- > **Rainer Huhle** · Member of the UN-Committee on Enforced Disappearances, CED

11:15–11:30 · COFFEE BREAK

11:30–13:15 · PANEL 1

"What do victims expect from Monitoring bodies and Courts?"

Moderator: **Michael Windfuhr** · Deputy-Director, German Institute for Human Rights

- > **El Ghalia Djimi** · Vice-president of ASVDH – Association Sahraouie de Victimes des Graves Violations des droits Humains Commises par l'Etat Marocain
- > **Elizabeth Lira** · Professor of psychology, Universidad Alberto Hurtado, Santiago de Chile
- > **Nora Sveaass** · Associate professor at Department of Psychology, University of Oslo; member of CAT 2005–2013
- > **Vezna Teršelič** · Director of Documenta – Center for Dealing With the Past, Zagreb

13:15–14:15 · LUNCH BREAK

14:15–15:45 · PANEL 2

"What do Treaty Bodies, Special Procedures and Courts need  
to meet victims' interests?"

Moderator: **Olivier de Frouville** · Professor of Public Law at the University of Paris 2; Working Group on Enforced or Involuntary Disappearances

- > **Carla Ferstman** · Director of REDRESS, London
- > **Margret Osterfeld** · Psychiatrist and psychotherapist, Dortmund; member of SPT
- > **Sandra Ratjen** · Senior Legal Advisor, International Commission of Jurists

15:45–16:00 · COFFEE BREAK

Conference languages are English and Spanish

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# VICTIM ORIENTATION

2

## EXPERT CONFERENCE

"The Meaning and Implementation of Victim Orientation  
in the Treaty Bodies of the United Nations"



16:00-17:30 · PANEL 3

"Dealing with victims: The experience in Treaty Bodies and Special Procedures"

Moderator: **Gabriella Citroni** · Professor of International Human Rights Law, University of Milano-Bicocca

- > **Heisoo Shin** · Sociologist, Korea; Member of CESCR; former vice-chair of CEDAW
- > **Alvaro Garcé García y Santos** · Member of CED; Ombudsman for the Penitentiary System in Uruguay
- > **Pooja Patel** · International Service for Human Rights, Geneva

18:30 · DINNER

## TUESDAY · 30 SEPTEMBER

09:00-10:30 · PANEL 4

"Dealing with victims: The experience in International Courts"

Moderator: **Wolfgang Kaleck** · Director of the European Centre for Constitutional and Human Rights – ECCHR, Berlin

- > **Fergal Gaynor** · Lawyer; Common legal representative of victims in the Muthaura and Kenyatta case at ICC
- > **Gabriele Mischkowski** · Researcher at medica mondiale, Köln
- > **Silke Studzinsky** · Lawyer; Trust Fund for Victims at the ICC

10:30-10:45 · COFFEE BREAK

10:45-12:15 · PANEL 5

"Between legal neutrality and victims orientation: pathways into the institutional designs"

Moderator: **Carlos Beristain** · Doctor of Social Psychology, Universidad de Deusto, Bilbao

- > **Federico Andreu** · Lawyer, International Commission of Jurists, Bogotá
- > **Ana Lorena Delgadillo** · Director of 'Fundación para la Justicia y el Estado Democrático de Derecho' México
- > **Emmanuel Decaux** · Chair of CED; Professeur de droit public à l'Université Panthéon-Assas Paris II

12:15-13:00 · CONCLUSIONS

Moderators: **Emmanuel Decaux** and **Rainer Huhle**

13:00 · LUNCH

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by Dr Rainer Huhle

## 2

# How victims became subjects in the United Nations

The author is a member of the management board of the Nuremberg Human Rights Centre and a member of the UN Committee on Enforced Disappearances.

In September 2014, Estela de Carlotto, founder and president of the "Abuelas de Plaza de Mayo", travelled to Geneva. Only a few weeks earlier, she had found her grandson Guido, born by her daughter Laura while she was in secret detention during the dictatorship in Argentina; Estela had been searching alongside other grandmothers for decades. Our Committee on Enforced Disappearances, together with the Committee on the Rights of the Child, had the opportunity to meet her in what became a very emotional moment. In her address to the Committee Members, one of the things Estela said was this – and let me quote her in her polished Spanish:

Naciones Unidas para nosotros era el refugio, el lugar donde pudimos llegar, donde fuimos escuchados, donde fuimos entendidos. Agradecemos enormemente este respaldo permanente, que desde el 1981 hemos recibido de Naciones Unidas.<sup>1</sup>

These friendly remarks without doubt reflected the sincere feelings of Estela de Carlotto. Immediately, her comment made me think of the many instances when the United Nations had **not** backed victims, had **not** listened to them, had **not** understood their needs and anguish. My hand went up without consulting much with my mind, and I suggested that in this case, we would have to give the United Nations a proper name, and that this name was the one of Theo van Boven. The positive experience that Estela and other victims of the Argentinean, Uruguayan and Chilean dictatorships had in the late seventies and the eighties of the

past century would not have been possible without the stubborn, and at the same time highly professional engagement of UN mandate holders like Theo van Boven, Thomas McCarthy, Nino Cassese and certainly others. Thanks to them, victims of gross human rights violations have found in the UN a "place to turn to", as Estela said.

---

### Difficult beginnings

A short look back at the beginnings of the human rights work in the UN makes it clear that this positive experience was by no means a matter of course and that it took a long time to finally give victims a place in the system.

The first experience victims had with the United Nations must have been terribly frustrating. After World War II, people from all parts of the world had put trust and hope in the human rights promises of the Charter and in the Human Rights Commission (HRC) that started its work in 1946. These people sent to the UN thousands of communications concerning human rights violations every year, and, as the Commission's Summary Records note, "some letters alleged violations of human rights within particular countries!"<sup>2</sup>

Already at its first official session, in January 1947, the Commission had to deal with the question of what should be done with such 'communications', which even at this early date was the prudent term for these complaints. Opinions were divided in the Commission, with René Cassin and the brave Hansa Mehta from India and some other delegates from

<sup>1</sup> Meeting of Committee on Enforced Disappearances and Committee on the Rights of the Child with Estela de Carlotto, September 2014.  
<sup>2</sup> Commission on Human Rights, Summary Record of the Second Meeting, Held at Lake Success, New York, on Monday, 27 January 1947, Item 9: Consideration of communications received (E/CN.4/W.3).

smaller countries advocating an active approach to the complaints, while the big powers argued that the Commission could not accept individual complaints. Since the Charter said nothing on the topic, and at the time there was no precedent of case law nor "best practice" of other bodies available, the Commission did the obvious: it set up a sub-committee to explore the issue. The result was not very clear, though. Thus, in August 1947 the Human Rights Commission's political superior, the Economic and Social Council, picked out from the Commissions proceedings the phrase that best suited the political preference of its member states. It read: "... the Commission recognizes that it has no power to take any action in regard to any complaints concerning human rights."<sup>3</sup>

One might well call this the original sin of the Human Rights Protection System in the UN, since this decision, let me repeat it, had no legal foundation. Hersch Lauterpacht, for example, who considered the right to petition a fundamental human right, sharply criticized its denegation. In his opinion, the Economic and Social Council (ECOSOC) was not only authorized, but under an obligation to take action with regard to complaints concerning human rights.<sup>4</sup>

It has almost been forgotten that the right to petition was originally among the rights to be included in the Universal Declaration of Human Rights (UDHR). France made a concrete proposal:

Everyone has the right, either individually or in association with others, to petition or to communicate with the public authorities of the State of which he is a national or in which he resides. He [– they forgot the 'she' in those times – ] also has the right to petition or communicate with the competent organs of the United Nations in matters relating to human rights.<sup>5</sup>

With the precedent of the Commission's and Economic and Social Council's decision to "self-absolve" itself of the right (and duty) to deal with individual complaints, this French proposal was hardly more than a symbolic act of protest. You will not find an explicit right to

petition in the Universal Declaration of Human Rights, although it can be construed from other rights.

Several motivations shaped the final decision. One has to take into account the weakness of the Human Rights Commission which was still struggling to find its place within the United Nations, as well as structural and financial challenges. On the part of the Economic and Social Council, it was a political statement making clear that states did not wish to be exposed to complaints about their human rights record. For approximately the next twenty years, victims of human rights violations found no way to bring their complaints to the United Nations, with the exception of a complicated procedure of handling the communications in strict confidentiality, and without foreseeing any right to relief for the petitioners. In 1970, it was defined in Resolution 1503, for quite a while the only and rather toothless complaint procedure in the system.

Even so, complaints came in, not by the thousands but by tens of thousands. German legal scholar Johann Wolfgang Brügel, exiled from Prague to London, found:

If one considers that only comparatively few people are aware of the mere possibility of approaching UN with their complaints, and that most of those who feel wronged by an oppressive regime under which they have to live are unable to communicate with an outside body, it must be said that the number of petitions is amazingly high.<sup>6</sup>

John Peters Humphrey, the first Secretary of Human Rights in the nascent system, who had to handle these communications, wrote later – at the prudent distance of 35 years – that this procedure "was probably the most elaborate wastepaper basket ever invented."<sup>7</sup>

Whatever the reasons for this far-reaching decision by the Human Rights Commission and Economic and Social Council might have been, it was the denegation of what by all standards is a basic and already well-established human right, the right to petition.

3 Commission on Human Rights, Report to the Economic and Social Council on the First Session of the Commission, Held At Lake Success, New York, From 27 January to 10 February 1947 (E/259), p. 6.

4 Lauterpacht, Hersch: *International Law and Human Rights*, London 1950, pp. 234 ff.

5 A/C.3/244/Rev.1/Corr.1, 14 October 1948: France: Amendment to the additional article in the Declaration concerning petitions and communications (E/800).

6 Brügel, Johann W.: "The Right to Petition an International Authority", in: *The International and Comparative Law Quarterly*, Vol. 2, No. 4 (Oct. 1953), pp. 542–563, at 543.

7 Humphrey, John P.: *Human Rights and the United Nations: A Great Adventure*, Dobbs Ferry, New York (Transnational Publishers) 1984, p. 28.

## Slow progress

This was the situation for at least 20 years. But in the context of the adoption of the two basic human rights treaties, the issue had to return to the agenda. From 1967 on, the Human Rights Commission slowly but steadily began to change its defensive position towards individual complaints.<sup>8</sup>

But the treaties and their ratification process were not the only reason. In 1967, the military took power in Greece and established a regime on the pillars of widespread torture against the opposition. Amnesty International built up a campaign against torture in Greece that, in many aspects, surpassed former efforts and contributed to the growing sensibility towards this crime on the international level. At the same time, horrendous dictatorships in Latin America sent shock waves through the international community. Illegal detention, torture and enforced disappearance became a widespread practice, as in some other parts of the world, too. But in Latin America, civil society was better prepared than in most of the rest of the world to denounce these crimes, to give them a name and to bring them to the attention of the international protection systems on the regional and universal level.<sup>9</sup> In 1973, Amnesty International convened the first International Conference on the Abolition of Torture. Two years later, the World Medical Association approved its Tokyo Declaration on the ethics of medical personnel against torture.

The seventies then saw a series of important declarations and normative steps within the United Nations. In 1975, the General Assembly adopted the 'Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'.

The keyword here is "protection", and indeed is it the protection of victims of torture that led, three years later, to an innovative step in the United Nations, the creation of a special (voluntary) fund for victims of torture. Notably, at its beginning, this fund was directed towards a unique and specific situation, that

of Chile,<sup>10</sup> where, soon after Pinochet's coup d'état, human rights defenders had undertaken the remarkable work of documenting and denouncing the crimes of the dictatorship and carried it right to the United Nations. In 1981, it was transformed into a general 'United Nations Voluntary Fund for Victims of Torture', now open for all victims from states

in which the human rights situation has been the subject of resolutions or decisions adopted by either the General Assembly, the Economic and Social Council or the Commission on Human Rights.<sup>11</sup>

The Fund rules ensured that no legal proof was necessary for victims to receive humanitarian support and foresaw 'direct assistance' in a very broad way. This way, victims had for the first time a possibility not only to be heard but also to be supported in measures of redress and, through some of the projects funded, also in preventive measures.

But what about guaranteeing the rights of victims to seek justice, truth and reparation? Only the 1980s gave answers to these basic issues of victims' rights. In its 1978 session, and in the same meeting immediately before the decision to establish the Torture Victims Fund, the General Assembly adopted Resolution 33/173 on "Disappeared persons" in which it touched for the first time upon the topic, declaring itself "[d]eeply concerned by reports from various parts of the world relating to enforced or involuntary disappearances."<sup>12</sup>

Two years later in 1980, the Human Rights Commission established the Working Group on Enforced or Involuntary Disappearances, composed of five independent experts. The creation of the Working Group was the true breakthrough in the relationship between victims and the United Nations.

And here it is inevitable that we come back again to the work of Theo van Boven, at the time director of the Human Rights Division of the United Nations, the predecessor of the High Commissioner of Human Rights. The procedure of the Working Group, as it was

8 Möller, Jakob Th.: "Petitioning the United Nations", in: *Universal Human Rights*, Vol. 1, No. 4 (Oct. – Dec. 1979), pp. 57–72, at 59 ff.

9 Huhle, Rainer: "Die politische Sprengkraft des Unpolitischen. Die Menschenrechtsbewegung verändert das politische Gesicht Lateinamerikas", in: Jürgen Mittag/Georg Ismar (eds.): „¿Elpueblounido?“ Soziale Bewegungen und politischer Protest in der Geschichte Lateinamerikas, Münster 2009, pp. 405–432.

10 General Assembly Resolution 33/174 Establishment of the United Nations Trust Fund for Chile ("composed of a chairman and four members with wide experience of the situation in Chile") (A/RES/33/174, 20 December 1978).

11 United Nations Voluntary Fund for Victims of Torture (A/RES/36/151, 16 December 1981).

12 General Assembly Resolution 33/173 Disappeared Persons. (A/RES/33/173, 20 December 1978).

conceived and pushed through many obstacles, was certainly a very 'special procedure' at the time. Instead of another country reporting group (this time the candidate had been Argentina), van Boven designed a Working Group with a general thematic mandate, the first of its kind.<sup>13</sup> He made sure that the Group could receive complaints on individual cases, and not only from families of the disappeared but also from organizations that defended the human rights of these victims. This was the first time that the confidentiality of case examination, as established in 1970 in the 1503 procedure, was given up, and a direct communication between victims or their representatives and a United Nations body with a public reporting capacity was established. "The lot of the victim who complains and is heard is already a better one," is a favourite quote of Theo van Boven which he borrowed from René Maheu, the long-serving director of UNESCO.

The second important aspect was equally new. The director of the Human Rights Division interpreted the working Group's mandate<sup>14</sup> in a way that allowed it to establish an Urgent Actions procedure to search for the missing person, and, not insignificantly, he found enough funding to start the work. It was a success for victims, as Estela de Carlotto rightly remarked, but the United Nations was not yet prepared for it, and did not ensure that its victims-oriented Head of the Human Rights Division got the necessary support. In February 1982, Secretary General Pérez de Cuéllar, pressured by Argentina, the United States and others did not extend van Boven's contract. This is not the place to go into details of this affair, but it is certainly one of the most thrilling behind-the-door intrigues the United Nations has seen.

And yet, the virus of victim orientation was now entrenched in the system. Already in its first year, the Working Group presented a comprehensive report to the Human Rights Commission. In 1982, the Human Rights Commission established the mandate of a Special Rapporteur on Summary or Arbitrary Executions (today called the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions), and in 1985 the mandate that perhaps is best known beyond United

Nations circles, the Special Rapporteur on Torture (a mandate also held by Theo van Boven for some years). The year before, the General Assembly had adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. One contemporary analyst aptly described these three special procedures, The Working Group against Disappearances, the Special Rapporteur on Summary or Arbitrary Executions and the Special Rapporteur on Torture as together a kind of "international habeas corpus."

Thus, during the eighties, victims had found a considerable increase in attention within the United Nations. Specific norms defined some of the most heinous violations of human rights in more precise ways, monitoring for these crimes was instituted, reporting was drawn out of the dark chambers of confidential diplomacy, and humanitarian actions were devised, although in no relation to the amount of crimes committed.

But this was still a mosaic of very different pieces. At the end of the decade, the Sub-Commission called for the appointment of a Special Rapporteur with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms with a view to exploring the possibility of developing basic principles and guidelines on the issue.

The man they found for this job was, not surprisingly, again Theo van Boven. If former efforts had aimed at dealing with some of the most terrible human rights violations and redressing some of their victims at least in a very limited way, the idea of the principles that soon were called the van Boven principles was to collect the experience and practice acquired through these instruments and bind them together in a comprehensive statement of what the rights are that victims of gross human rights violations are entitled to.<sup>15</sup>

This task was directly related to a parallel set of principles devised by Louis Joinet on the necessity of combating the impunity of those violations. These 'Princi-

13 The story of the Working Group and other developments within the UN Human Rights system in response to the repressive regimes of the seventies and eighties is aptly described in Iain Guest: "Behind the Disappearances. Argentina's Dirty War Against Human Rights and the United Nations", Philadelphia, University of Pennsylvania Press 1990; for the Working Group see pp. 191 ff.

14 Given by Human Rights Commission Resolution 20 (XXXVI) of 29 February 1980.

15 Final report submitted by Mr. Theo van Boven, Special Rapporteur, "Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms" (E/CN.4/Sub.2/1993/8, 2 July 1993); [http://www1.umn.edu/humanrts/demo/van%20Boven\\_1993.pdf](http://www1.umn.edu/humanrts/demo/van%20Boven_1993.pdf) (PDF, 196 KB, not barrier-free).

ples for the Protection and Promotion of Human Rights through Action to Combat Impunity,"<sup>16</sup> set out three basic principles of victims' rights:

- The Right to Know
- The Right to Justice
- The Right to Reparation and Guarantees of Non-Recurrence

It is obvious that these principles have inspired and are enshrined in the Convention against Disappearance.

Some have criticized these principles of victim rights as an implicit acknowledgement of the persistence of victimization of people, as a kind of defeatism. But through these principles, victims of gross human rights violations have found recognition and visibility as never before in the domain of human rights policies. Victims' rights were stated in this document as rights under international law. The principles reaffirmed clear obligations for states to respect human rights and to set out the basic rights of victims if states violated human rights, especially

- an equal and effective access to justice; adequate, effective and prompt reparation for harm suffered;
- access to relevant information concerning violations and reparation mechanisms;
- In other words, the right to justice, to truth and to redress.

In its revised version, presented by Cherif Bassiouni and adopted by the Economic and Social Council in 2005, victims are defined as

persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where

appropriate, and in accordance with domestic law, the term 'victim' also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

And very importantly:

A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.<sup>17</sup>

To my great satisfaction, this definition comes very close to that in the Convention against Enforced Disappearance, which states in article 24: "[...] 'victim' means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance."

In our Committee, we have seen many times that these definitional details are anything but legal bells and whistles. The notion of what constitutes a victim has notably and importantly developed in recent years. Compare the 1984 Convention against Torture's article 14 where the victim of torture appears rather casually, as an object of state duties,

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

with the Convention against Enforced Disappearance (article 24) where the victim appears as the subject of a comprehensive series of rights that even include the "right to form and participate freely in organizations and associations" to search for the disappeared.

Thus it seems that victims' rights have become an integral part of the human rights protection efforts in the United Nations. As Flavia Pansieri, the Deputy

<sup>16</sup> Commission on Human Rights: Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119 (E/CN.4/Sub.2/1997/20/Rev.1), [http://www1.umn.edu/humanrts/demo/RightsofDetainees\\_Joinet.pdf](http://www1.umn.edu/humanrts/demo/RightsofDetainees_Joinet.pdf) (PDF, 3 MB, not barrier-free).

<sup>17</sup> Economic and Social Council Resolution 2005/30 of 25 July 2005 (Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law).

### Convention against Enforced Disappearance Article 24

- 1 For the purposes of this Convention, 'victim' means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.
- 2 Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.
- 3 Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.
- 4 Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.
- 5 The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:
  - (a) Restitution
  - (b) Rehabilitation
  - (c) Satisfaction, including restoration of dignity and reputation
  - (d) Guarantees of non-repetition
- 6 Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.
- 7 Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

High Commissioner for Human Rights, said in a recent speech in Geneva: "One of the fundamental lessons we have learned through our operational experience has been that victims must occupy a central place in any search for truth, justice and reparations."

I am convinced that, yes, there has been a positive development within many United Nations Human Rights Institutions over the years. My review was intended to make this progress visible. But, of course, there are many shortcomings, not only in practice but also in doctrine and in institutional settings. Our conference has the purpose of looking behind the curtain and identifying some of these shortcomings, hopefully with a perspective of constructive practical improvements.

### The notion of 'victims'

Allow me to close my remarks with some reflections on the very notion of 'victim' that seems so central to our work.

Since the year 2012, the Government of Colombia and the guerrilla of the Fuerzas Armadas Revolucionarias de Colombia (FARC) have been negotiating the terms of a possible peace accord in the capital of Cuba, La Habana. Among the many original features of this process, the direct participation of victims of the protracted period of over fifty years of internal armed conflict stands out. Responding to growing pressure from civil society, the delegations opened the closed doors of



their negotiations in order to listen to victims. More precisely, through a complicated process, the different victims' organizations in Colombia, including victims of all actors in the armed conflict, nominated sixty persons as their representatives that went to La Habana in groups of twelve on five occasions to present the views of victims.

In the first of these five groups there was Ángela María Giraldo, widow of a politician kidnapped and finally killed by the FARC. The media transmitted a photograph of a radiant, beautiful Ángela María Giraldo in La Habana greeting one of the negotiators with a smile. The capture of the photograph was "Victim of FARC smiles at guerrilla leader". A right wing politician took harshly against Ángela María Giraldo, claiming that those who greet victimizers with a big smile cannot be a representative of victims. As it turned out, the person Ángela María Giraldo was smiling at was not a guerrilla but a member of the Government delegation. However this political exploitation of the whole visit is not the only problem here. From a victims' perspective the point is that this politician and with her, a part of the media and the public, are not prepared for the fact that a person that has lost her husband (and in this case, even more family members) has a right to live a normal life, be a professional, take part in politics and dress festively – all sins of Ángela María Giraldo.

In the second group of victims' representatives, another woman became the target of even more aggressive attacks. Yanette Bautista is the sister of sociologist and former guerrilla, Nydia Erika Bautista, who was disappeared and assassinated by the military in 1987. As Yanette Bautista fought the case through every possible instance and even achieved, at least temporarily, that high military officers were castigated, she has become one of the best-known human rights defenders in Colombia. But when she went to La Habana, ex-president Uribe publicly denied her the status of victim, affirming – speaking in his capacity as a Senator – that she was a guerrilla. The problem here is not just that this was a lie, but that the Senator is saying that a guerrilla or ex-guerrilla cannot be a victim of human rights violations.

So both recent examples confront us with big challenges. First, in spite of all our elaborate definitions, obviously these are not shared by everybody, and there are very subjective ideas about victimhood and the qualities different people attribute to this condition.

The ideal victim, one might conclude from these cases, is a humble person, lamenting her bad fate and modestly asking for help. The 'crazy mothers' as they used to be called in Argentina, the Grandmothers like Estela de Carlotto, the Ángela María Giraldo and Yanette Bautistas do not fit into this image. They stand for a different way of dealing with victimhood, a way that apparently is still a provocation for many.

The price for this attitude is often re-victimization. For both Ángela María Giraldo and Yanette Bautista, their public appearance in La Habana and their engagement for peace with justice has meant a barrage of hate speech and, at least for Yanette Bautista, severe threats. When we talk about victim orientation, this is a problem we must always keep in mind.

But there is something even more important that these stories tell us. They oblige us to reflect on the very notion of 'victim'. I confess that I have come to dislike this word. Remember that in contemporary youth slang 'victim' is one of the insults you can throw at somebody you contempt. I would much prefer to speak of 'persons that have been victimized', human beings that have been deprived of some or all of their rights. Because what they need is not pity but recognition as persons with human dignity and as subjects with full rights and support for claiming these rights.

When in the panels of these two days we hear a lot about what can be done and is already done to improve the position of victims, when we talk about making victims more visible, securing more participation in our proceedings, giving them an active part as civil party and better protection against re-victimization as witnesses in courts, this should be our main concern.

Taking 'victims' seriously as persons with a life project before and after their victimization, recognizing them as persons that often enough have been victimized because they have been fighting for a cause, means also to question this divide between 'victims' and us others, we who from a position of strange security care for 'victims'. It might lead us to better understand that a society tolerating that some of its members are victimized is a society victimizing itself. In the words of Chilean poet Ariel Dorfman, author of the breath-taking novel "Death and the Maiden":

Torture ... plac[es] the victim outside and beyond any form of compassion or empathy, [it] demands

of everyone else the same distancing, the same numbness, on the part of those who know and close their eyes, [...] and ears and hearts. Torture [...] therefore [...] corrupts the whole social fabric because it prescribes a silencing of what has been happening [...], that we lie to ourselves about what is being done not far from where we talk, while we munch a chocolate bar, smile at a lover, read a book, listen to a concerto, exercise in the morning. Torture obliges us to be deaf and blind and mute.<sup>18</sup>

And, we must add, Enforced Disappearance and Extra-judicial Killing, too.

I thank you all for your attention, for your being here, for trying to find together ways to give victimized persons dignified access to the modest recourses of redress that our institutions can offer.

18 Foreword: "The Tyranny of Torture," in: Sanford Levinson (ed.): *Torture: A Collection* (Oxford, Oxford University Press 2004), pp. 8–9.



Summaries by Dr Christiane Schulz, Consultant for Human Rights

## 3 Panel Discussions

### Welcoming Session

Beate Rudolf, Director of the German Institute for Human Rights, and Martin Huth, Head of the Unit for International Human Rights Protection at the German Ministry of Foreign Affairs, welcomed members of the United Nations Treaty Bodies and Special Procedures, independent experts, and representatives of non-governmental human rights organizations from Africa, Asia, America and Europe.

Beate Rudolf briefly introduced the subject in her introductory speech. She pointed out that the subjects of human rights are the victims and that they must be at the centre of human rights work, while in the past there was greater emphasis on how the state must deal with perpetrators. Now the situation has evolved and victim orientation has become one of the most important issues in human rights debates.

The general objective of the conference was to clarify:

- Victims' expectations from monitoring bodies and courts
- Experiences of Treaty Bodies and Special Procedures (and in International Courts) in dealing with victims
- Possibilities of institutional implementation

During the two-day meeting the participants discussed these questions in five thematic panels:

- 1 What do victims expect from monitoring bodies and courts?
- 2 What do Treaty Bodies, Special Procedures and courts need in order to meet victims' interests?

- 3 Dealing with victims: The experience in Treaty Bodies and Special Procedures
- 4 Dealing with victims: The experience in international courts
- 5 Between legal neutrality and victims' orientation: Possibilities of institutional implementation

### Panel 1: What do victims expect from monitoring bodies and courts?

This opening panel was dedicated to some basic questions on the conditions of victims searching for justice and compensation from international institutions such as UN Treaty Bodies, Special Procedures or international courts. Michael Windfuhr, Vice-director of the German Institute for Human Rights, identified the following issues for the discussion:

- Who is considered a victim of human rights violations or breaches of humanitarian law by these different bodies? Are there any general assumptions or definitions of the condition that makes a person a victim and about their legitimate representatives before international bodies to defend their rights?
- What motivates victims to approach international monitoring or judicial instances? Do they seek practical help, legal redress, moral support, or are there further and more complex motives?
- How can victims themselves and their representatives find access to the international bodies and institutions?

The question of the victim concept was discussed intensively. Often the notion of 'victim' is perceived as a

stigmatization meaning that the term survivor is preferred. But victims and their representatives use the UN-terminology in order to claim their rights. What is important is the broader concept of victim, meaning that it does not only pertain to direct victims but also to their immediate family and dependents. Nora Sveaass, a member of UN Committee against Torture from 2005–2013 and since 2014 member of the UN Subcommittee against Torture, referred especially to Resolution 2005:

Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term victim also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization. The term 'survivors' may, in some cases, be preferred by persons who have suffered harm. The Committee uses the legal term 'victims' without prejudice to other terms which may be preferable in specific contexts.<sup>1</sup>

The importance of victims' rights was illustrated by El Ghalia Djimi, Vice-president of Sahrawi Association of Victims of Grave Human Rights Violations (ASVDH), from Western Sahara based on the example of the Convention against Enforced Disappearances. In 2009, the United Nations Working Group of Enforced Disappearances visited Morocco. Instead of responding effectively as required by the Working Group, the government declared the disappeared Sahrawis as dead without offering evidence or reliable information, although Morocco is part of the Convention for the Protection of all Persons from Enforced Disappearance.

Moreover, El Ghalia Djimi, like Vezna Teršelič, head of the Centre for Dealing with the Past – Documenta, from Zagreb, clearly expressed expectations with respect to the participation of victims in human rights mechanisms of the United Nations. These include that

experts listen to victims; on-site visits; following up on the investigation of cases – even when states manipulate the truth; and pushing for more effective mechanisms for monitoring the human rights situations. Vezna Teršelič advocated for protective participation, friendly processes and cultural sensitivity as conditions for the participation of survivors. Justice in criminal and penal processes as well as the right to remember are also crucial. From the perspective of those affected, justice is the greatest desire. Elizabeth Lira, Professor of psychology from Universidad Alberto Hurtado in Santiago de Chile spoke as an expert on the treatment of survivors of grave human rights violations about the key aspects of reintegration of the victims into society; that their rights be officially recognized; and that the circumstances leading to the violations of the rights be transformed. Elizabeth Lira pointed out that there is a gap between policies of reparation and victims' feeling of recompensation.

During the discussion the need for survivors to tell their truth of the story was highlighted: Events that took place must be made known to society at large. In the struggle for historical interpretation, survivors may suffer from this situation. The difficulties of contact between victims and international bodies were also discussed. It has been found that there are certain groups with special challenges. For example, in cases of enforced disappearance of migrants who are neither in their country of origin nor in the country of the act of disappearance, there is no serious interest in the detection of crimes. Particular obstacles also exist if perpetrators are non-state actors. Finally, international procedures take too long – at least five to ten years to close a case at international courts and twenty years for the government to implement the punishment.

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## Panel 2: What do Treaty Bodies, Special Procedures and courts need in order to meet victims' interests?

In this panel Olivier de Frouville, member of the UN Working Group on Enforced or Involuntary Disappearances, discussed the channels of communication and interaction between international human rights procedures and victims:

<sup>1</sup> United Nations: Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; General Comment No. 3 of the Committee against Torture (CAT/C/GC/3); 19 November 2012 ([http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf) (PDF, 167 KB)).

- How do victims know about the opportunities these bodies offer? How is outreach organized, and what can be improved to reach out to more people?
- How effective is the quality of contact channels? What do the United Nations High Commissioner for Human Rights and court registries do to accelerate communication and to guarantee the best quality of information about the possibilities and limits of using these bodies?
- How can victims best be informed about which body is the most adequate for their specific needs and conditions, as well as how they can gain access to these bodies?

The participants expressed the need for experts' coordinating advice. Today the United Nations are not in the position to provide access to the bodies and there is a lack of knowledge of the types of mechanisms by the general public, especially in marginalised groups. One example of good practice is the work done by the United Nations Office on Drug and Crime which has provided substantial advice in following up on mafia cases for the Office of the High Commissioner for Human Rights (OHCHR). Clara Ferstmann, Director of REDRESS (London), discussed victim and witness protection and underlined the importance of working together with victims' organisations as well as with bodies inside and outside the United Nations to gain more protection. There is also a strong need to increase media coverage of the actions and recommendations of the United Nations bodies. Civil society should be able to actively participate in the dialogue with the United Nations. It is unacceptable to carry out a debate only between officials of the body and representatives of the country in Geneva.

The speakers pointed to special needs for specific groups. This applies for example to having access to the system by women. Fewer women than men come forward with complaints. For instance, in Congo 200 cases of men on trial were recorded in comparison to zero cases involving women. This is related to the fact that cases involving women as survivors were considered by civil society as already lost. Margret Osterfeld, psychiatrist and psychotherapist, as well as member of the United Nations Sub-Committee on Prevention of Torture, highlighted the situation of the victims placed

in psychiatric therapy or institutions. In Germany, they are often separated from society. Persons victimised by the psychiatric system frequently have problems expressing themselves. She recommended that, at the time of a psychiatric diagnosis, the informed consent of the patients should be sought in order not to take decisions that violate their human rights. Psychiatric patients may need interpreters to make their cases understood by those working on human rights.

The major differences between bodies and special procedures were pointed out by Sandra Ratjen, Senior Legal Advisor of the International Commission of Jurists. She also pointed to the importance of maintaining a high level of communication between victims and procedures.

Another challenge pertains to the different phases of the proceedings which may have different impacts on victims. For example, victims who bring their cases before the Inter-American Court are often accompanied by NGOs. Even if they win their case, at the moment where the verdict is not complied with, the impact on victims is very negative and similar to a lost case. It is important to pay attention to the risk of re-victimization throughout the process (before, during and after). Finally, concrete needs and proposals concerning victim orientation were developed:

- United Nations experts should make use of different possibilities to meet with victims. These may include social media such as Skype.
- The trend that victims have to provide evidence – including the submission of public documents issued by the state – needs to be challenged, it is not permissible to reverse the burden of proof.
- There is a need for training on cooperation with victims for the experts and staff of the United Nations Human Rights System and a reflection about the quasi-diplomatic role of the staff of OHCHR.

Finally, the discussions pointed out that a greater knowledge of the international human rights protection system, its mechanisms and procedures is needed; in order to meet victims' interests there is a need for public recognition by an international body of the harm suffered by the victims.

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### Panel 3: Dealing with victims: The experience in Treaty Bodies and Special Procedures

Panel three examined in detail the channels of information and interaction between Treaty Bodies and victims. Professor of International Human Rights Law at the University of Milano-Bicocca, Gabriella Citroni, pointed out the gap between the conditions and reality. She asked:

- How can victims participate in the central function of all Treaty Bodies, the examination of State Reports and the elaboration of the respective list of issues?
- In the case of Treaty Bodies that have an individual complaint mechanism or an Urgent Action facility, how can these instruments be designed so that victims can make the quickest and most effective use of them?
- In general terms, is there a kind of 'welcoming culture' for victims?

Gabriela Citroni stated that reprisals against victims are a fact, even if individuals have a right to submit complaints to the human rights system, as mentioned explicitly in the Declaration on Human Rights Defenders. Pooja Patel, member of International Service for Human Rights, expressed that communication, alternative reports, as well as visits from human rights defenders to Geneva take place in a context in which civil society experiences increased reprisals in their home countries. In the case of families of disappeared persons in Sri Lanka who sent information to human rights bodies, law enforcement officials visited them at home. The families were also harassed after the visit of the OHCHR. Sri Lanka is an extreme example of ongoing reprisals against human rights defenders. This situation can be addressed if Special Rapporteurs record and monitor cases and then bring this to the attention of the United Nations.

As an expert working within the United Nations Human Rights Protection System, Heisoo Shin, Member of United Nations Committee on Economic, Social and Cultural Rights and former vice-chair of the Committee on the Elimination of Discrimination against Women (CEDAW) pointed to the importance of victim testimonies for treaty body experts. These testimonies,

as well as country visits of the United Nations bodies, give visibility to survivors. As for CEDAW, there are limits on the mandate contacting victims. But individual acknowledgment or compensation to victims are just small steps. In many cases, states, such as Japan, do not officially recognize having had a state policy of human rights violations. And lastly, domestic implementation is a major challenge.

Alvaro Garcé García y Santos, Member of the United Nations Committee on Enforced Disappearance (CED), discussed the issue of a welcoming culture for survivors and what policies should be implemented to achieve such a culture. For example in Geneva, a welcoming culture must be based on equality between survivors and United Nations experts. In addition, a welcoming culture should also consider detainees, because of the special difficulties for them to report their situation to international procedures.

First, there is a need for guidance through the existing system and on how to approach institutions as well as on information about the various options available. During the discussion participants mentioned positive examples regarding the importance of open spaces for exchange and how to make better use of these spaces. The Inter-American system was presented as a good practice. Public hearings are a key moment for the victims. Work must focus on the logic of prevention and must avoid chances for re-victimization. There is a need for asking the victims what is meaningful for them, how to follow up and which measures have been useful.

At present, in the context of the criminalisation of human rights defenders there is a tendency that protection is connected with physical measures like armoured cars, bulletproof vests, escorts or cameras. However, the major challenge is to investigate, identify and eliminate the risk factor. Policy measures are essential, including raising the political costs in order to prevent attacks. An objective should be that all treaty bodies publish a report on the various reprisals against civil society taking issues to court. The system as a whole must respond.

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### Panel 4: Dealing with victims: The experience in international courts

The participants discussed in detail the channels of interaction between international courts and victims. Many issues related to the channels of information

and interaction between victims and international courts are similar to those treated in the panel on Treaty Bodies, in spite of the different procedures and the different objectives. Taking into account these differences and also the different budgets and logistical resources available to courts and Treaty Bodies, the examination of the quality of outreach and information channels as well as rules of access in both kinds of international bodies proved illustrative and useful. Wolfgang Kaleck, Director of the European Centre for Constitutional and Human Rights (ECCHR) Berlin and moderator of the panel, presented the central questions for the experts to discuss:

- What are the challenges for victims before international courts and the specific stress situations when confronted directly, either as 'independent participants' in the different stages of the investigation and prosecution, or as witnesses of the prosecution?
- Victims may appear personally in court, meaning that many legal, psychological and other problems can arise. This contrasts with the situations created in the interaction with Treaty Bodies, in which victims scarcely appear personally. What are the lessons learnt as to the creation of a 'welcoming culture' for victims, and of sensitivity to risks, as well as other consequences related to their appearance before court?
- From the experience of international courts, there might be some lessons to be drawn with respect to the situation of victims after their encounter with a court or Treaty Body. What are the responsibilities of these bodies after a case is legally closed?

Gabriele Mischkowski, researcher at Medica Mondiale emphasized the different situations of survivors. At the International Criminal Tribunal for the former Yugoslavia (ICTY) there are very different experiences regarding closed sessions in case of rape. Some witnesses did not want to testify in a closed session because the story of the survivor must be told. In the Milosevic trial, the session was closed and later the transcript was published without any way to identify the survivors. This meant that the survivors' stories were made public.

Another point to take into account is the imbalance of power between survivors and lawyers. As discussed

earlier, a welcoming culture is very important because symbolically, at least, the imbalance of power can be compensated. At the same time, victims need a safe environment – but not overprotection – in order to prevent re-traumatization. A crucial aspect is the communication with victims and outreach, as explained by Silke Studzinsky, Legal Adviser to the Trust Fund for Victims at the International Criminal Court in The Hague. There is still the problem of access to courts and information. Victims need to make multiple petitions, and further problems result from language barriers and low levels of education. Based on her own experience, Silke Studzinsky added that Treaty Bodies can draw attention to issues neglected by international courts. As an example she mentioned the limited inclusion of crimes against women in Extraordinary Chambers in the Courts of Cambodia, which was subsequently addressed by CEDAW.

The limits in scope of reparation and of trial must be communicated to victims. Expectation management is crucial, as confirmed by Fergal Gaynor, Lawyer and current common legal representative of victims in the cases against Muthaura and Kenyatta at the International Criminal Court (ICC). He explained how in the Kenyatta case, nearly every promise made by the ICC was broken. From his experience it is very important to ask victims what they expect from the trial and to ask what modalities they require (nationality of lawyer, placement of court etc.). It is essential that powerful states cannot encroach upon the independence of the ICC; the ICC needs qualified and experienced prosecutors who are able and willing to deal with powerful interests. At the same time there should be much more transparency regarding the mandate of ICC. For example, reparation is not within the mandate of ICC, so neither the victims' right to truth nor the guarantee for non-repetition can be ensured.

Further aspects were highlighted during the discussion, including the question of how to introduce the victims' vision to courts and what direct consequences this implies. How to reinforce the structure in the country and the need for appropriate training for all persons involved with ICC was also pointed out. The statute of ICC is important in empowering victims but generally courts do not embrace victim empowerment. The courts tolerate victims but do not empower them. At the same time, the judges must not only judge but also inform the public about procedures, about procedural limits and about results. There is a responsibility to create transparency and establish truth.

### Panel 5: Between legal neutrality and victims' orientation: Possibilities of institutional implementation

In this last panel, the challenge was to reflect more thoroughly on the different situations given by the respective statuses and rules of the various Treaty Bodies and courts, as well as to provide some examples from Special Procedures. Carlos Martin Beristain, Specialist in Health Education and adviser to victims' organisations, introduced the panel. He highlighted the constraints and comparative advantages of those different bodies and the challenges to victims. The most common concern during the trial is how witness statements should be performed. The experiences of the victims must be the most significant in the trial so that survivors are able to confirm the importance of testimony and litigation.

Based on his many years of experience in the international human rights protection system, Colombian human rights lawyer Frederico Andreu Guzmán of the International Commission of Jurists explained the challenges for victims to find the most appropriate body to address their concern. In practice, cases are complex and many rights are violated at the same time (torture, disappearance, murder, displacement etc.). Understanding a case in all its dimensions helps to decide on the most suitable body. Treaty Bodies often cannot handle complex cases. Regarding the integrity and protection of the victims, every case involves a process of victimization, in particular in international processes where states deny the facts. But the victim is not only an object of law; he or she is also a subject of law. The victim should lead the process, the strategy should not be fragmented and there should be the option of using all available tools.

Professor Emmanuel Decaux, Chair of the United Nations Committee on Enforced Disappearances, discussed the increased attention to victims of human rights violations as being related to better accessibility and more empowerment of victims through participation. The Convention on Enforced Disappearance is innovative. This has consequences for the experts on its respective Treaty Body. Its experts work as an institution of habeas corpus in order to find any per-

son. With the reform of the Human Rights Council and the Addis Abeba Treaty, the impartiality of United Nations experts was highlighted. But impartiality does not mean indifference. Access to justice implies obtaining reparation, compensation, rehabilitation, satisfaction, and restoration of dignity and guarantee of non-repetition.

Assisting victims means legitimizing the role of non-governmental organisations and associations of forced disappearance (article 24 of the Convention). Ana Lorena Delgadillo, Director of the Fundación para la Justicia y el Estado Democrático de Derecho, pointed out that the United Nations system is still far removed for victims of human rights violations. In the case of Mexico, the regional Inter-American system is much more practicable because the system is relatively simple to approach, even for filing a case. The website is not complicated and many victims have personally made their own declarations.

Panel participants discussed that part of the welcoming culture involves a culture of monitoring the visit reports of the Special Rapporteurs and their recommendations. The results that victims expect are based on the procedure, which means that the rapporteur will listen, answer emails, respond to doubts etc. If victims feel represented by reports, they are helpful. This was the example of the reports of the Working Group on Enforced Disappearances' last visit to Mexico and the report of the Special Rapporteur on Migrants. In this case, the survivors created a mechanism within the country for providing follow-up support, even at a local level. There remain many challenges, such as in the case of human rights violations of migrants. In the case of Mexico, forensic investigation reports on the remains of migrants were based on the report of the Working Group regarding identification and the right to truth. This was linked to a hearing before the Inter-American System. The trust of the victims led to a research agreement with the Attorney General's Office in Mexico.

The main objective should be that the survivors feel accompanied and can act as a subject of law and lead the process. This is only possible when accompanying them and cooperating with them. NGOs should accompany and support victims' decision-making but not make decisions for them.



## 4 Conference Recommendations

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### English

**Recommendations on the Implementation of Victim Orientation in the Treaty Bodies and Special Procedures of the United Nations; the Office of the High Commissioner for Human Rights; State and National Human Rights Institutions and Non-Governmental Human Rights Organizations**

On September 29 and 30, 2014, members of United Nations Treaty Bodies and Special Procedures, independent experts and representatives of non-governmental human rights organizations from Africa, Asia, America and Europe met in Berlin. The invitation was made by the German Institute for Human Rights and the Nuremberg Centre for Human Rights with the goal of discussing the meaning and implementation of the principles of victim orientation in several areas of work for the protection of human rights.

The participants reflected on the development of victim orientation in the system of the United Nations, the challenges of implementation as well as victims' expectations of various departments and agencies of the Office of the High Commissioner for Human Rights.

**Recommendations to Treaty Bodies and Special Procedures of the United Nations and the Office of the High Commissioner for Human Rights**

The participation of victims of human rights violations is mentioned in numerous treaties and declarations as key to the effectiveness and meaning of their work. In order to implement the participation of victims, their knowledge should be expanded and specific mechanisms that facilitate their participation should be es-

tablished. The practice of participation also involves not only legal aspects of rights, but also their fulfilment in a psychosocial, anthropological, medical or political approach, among others.

### **Independence of Experts and Faith in the System**

For victims of human rights violations it is of great importance to fully trust in the integrity and independence of the experts of the United Nations Human Rights System. Therefore it is recommended that mechanisms should be developed to ensure that proposed and selected experts are fully independent in relation to states, companies and lobbyists.

### **A Welcoming Culture and Access to the System**

In order to facilitate victims' access to the United Nations system, the Office of the High Commissioner for Human Rights, the Treaty Bodies and Special Procedures should establish a 'welcoming culture'. Such a culture must be gender sensitive in all its aspects. It is recommended that the following proposals should be implemented:

#### **Changes to the website**

- The website of the Office of the High Commissioner for Human Rights should include a button with the question "Have you suffered a violation of human rights?"
- The subsequent menu on the webpage should guide the person through the United Nations System, showing locations where offices of the High

Commissioner for Human Rights exist, how they can be contacted directly, as well as introducing the bodies and relevant procedures within the United Nations system for each specific problem.

- It is recommended that the language of this website be checked with victims' representatives to ensure that it is comprehensible to people unfamiliar with the terminology used by human rights experts. This should be done, at the very least, in three of the official UN languages.

#### Meetings

- To improve access for victims of human rights violations to the United Nations system, Treaty Bodies and Special Procedures could hold sessions and/or informal meetings in a country that is particularly relevant to the specific topic of the respective human rights mechanism.
- Each Treaty Body/Special Procedures session should offer a private meeting of sufficient duration and including translation in order to discuss with victims or their representatives. These meetings should be held prior to meetings with government authorities so that victims' views can be taken into account.
- United Nations experts should express themselves in a way that is accessible to the general public, in particular to victims and their representatives.

#### Communication

- Direct communication between victims, the Office of the High Commissioner for Human Rights and the independent experts of Treaty Bodies and Special Procedures is crucial. A review should be carried out on the possibility of establishing direct communication via e-mail, telephone conferencing, or other forms of dialogue via the Internet.
- It is recommended that any correspondence and communication sent by victims and their representative to UN human rights mechanisms be immediately answered by a confirmation of receipt.

#### Follow up

- Considering the complex realities of human rights violations and the fact that some of the mechanisms of impunity are based on the concealment

of the identity of perpetrators, it is recommended that in cases of doubt, State responsibility should be presumed until evidence to the contrary is provided and the cases are admitted.

- The implementation of recommendations made by Treaty Bodies and Special Procedures in cases of human rights violations should be monitored during all phases and pertaining to all matters.

#### Protection

- The protection of victims and witnesses is a great challenge for the United Nations. It is important that the Treaty Bodies and Special Procedures work together with other agencies within and outside the United Nations in seeking protection for these groups. Protection must not be reduced to technical devices but must be part of a comprehensive strategy for guaranteeing non-recurrence. The proposed measures should take into account the specific risk factors involved and must always be designed based on prior consultation with the persons they are intended to protect, evaluating the practical conditions under which they are carried out. This may include mechanisms to monitor the agreed measures of protection, whenever possible in cooperation with the United Nations agencies present in the countries, be it offices of the High Commissioner or other UN-agencies.
- The United Nations human rights system as a whole and particularly the Office of the High Commissioner for Human Rights should respond promptly and publicly to cases of reprisals. The publication of an annual report on reprisals or threats suffered by members of civil society who bring cases of violations of human rights to the international system is an important instrument. It is also recommended that the evolution of these cases of retaliation should be reviewed annually.

#### Approaches reflecting the Special Situation of Vulnerable Groups

- It is recommended that Treaty Bodies and Special Procedures include in their reports a specific section that reflects the violations suffered by victim groups with specific vulnerabilities because of different conditions of discrimination such as their status as migrants, psychiatric patients, indigenous peoples, children and women.



### Capacity Building

- Taking into account the complexity of the work and the different functions within the system of human rights of the United Nations, it is recommended that all experts and staff working for the various entities and the Office of the High Commissioner for Human Rights should receive regular training.
- Training must take into account the particular conditions and specific vulnerabilities of victims and witnesses, including gender aspects.
- Training should enable an understanding of what victim orientation means. Experts but also victims should reflect on the potential tension between victim orientation and the quasi-diplomatic role of the experts.

### Recommendations for local representatives of the Office of the High Commissioner for Human Rights

The regional and field offices of the High Commissioner for Human Rights are key to effective communication with victims and their representatives. This implies good coordination between the different field offices and the offices in Geneva. It is recommended that these local offices should give priority attention to:

- Publishing information on the various human rights mechanisms in the United Nations system, taking into account accessible language and the various languages spoken in each country, with particular attention to the languages of indigenous peoples.
- Advice for victims to help them present their cases to the relevant mechanisms within the United Nations human rights system.
- Following up on recommendations made by Treaty Bodies and Special Procedures.
- Accompanying persons and organizations that pursue cases before the United Nations system, particularly in the phase following the initial pres-

entation of cases, including the use of protective mechanisms and measures of support if necessary.

### Recommendations to the National Human Rights Institutions

National Human Rights Institutions can contribute at different levels to a policy of victim orientation. They should:

- Monitor the implementation of recommendations made by international bodies in cases of human rights violations. These bodies should include in their annual reports an assessment of the degree of compliance therewith and identify obstacles to compliance.
- Establish with victims and their representatives adequate mechanisms to protect victims and witnesses.

### Recommendations for Non-Governmental and Civil Society Organizations

Non-Governmental and Civil Society Organizations play an important role and sometimes their accompaniment of victims is crucial. They should:

- Highlight their role in accompanying victims of human rights violations and making their voices heard; when representing victims they should not pursue their own agenda.
- Inform victims clearly and thoroughly before taking their cases to the United Nations and maintain this level of communication with victims throughout the period that the case is dealt with by the international human rights mechanism concerned.
- Assist particularly vulnerable groups of victims such as women, children, indigenous peoples, migrants, prisoners, patients in psychiatric institutions or groups marginalized because of poverty, language or culture.
- Give priority to the empowerment and support for victims when filing and following up on cases with international human rights bodies.

## Spanish

**Recomendaciones sobre la implementación de la orientación a víctimas (victim orientation) en los órganos de los tratados, en los procedimientos especiales de Naciones Unidas, en el Alto Comisionado de Derechos Humanos, en las instituciones nacionales y estatales de derechos humanos y en las organizaciones no gubernamentales de derechos humanos.**

En los días 29 y 30 de septiembre de 2014, se reunieron en Berlín los representantes de órganos de los tratados y los procedimientos especiales de Naciones Unidas, expertos independientes y miembros de organizaciones no gubernamentales de derechos humanos de África, Asia, América y Europa, atendiendo a la invitación del Instituto Alemán de Derechos Humanos y del Centro de Derechos Humanos de Nuremberg. Esta reunión tuvo como objetivo discutir el significado y la implementación del principio de orientación a víctimas en los distintos ámbitos de trabajo para la protección de los Derechos Humanos de éstas.

Los participantes reflexionaron sobre el desarrollo de la orientación hacia las víctimas en el sistema de las Naciones Unidas y los retos a los que se enfrenta su implementación, así como también se reflexionó sobre las expectativas de las víctimas frente a las instancias del Alto Comisionado para los Derechos Humanos.

**Recomendaciones a los órganos de los tratados, a los procedimientos especiales de Naciones Unidas y al Alto Comisionado de Derechos Humanos**

En numerosos mecanismos de Naciones Unidas, nacidos de tratados y de declaraciones, se destaca la participación de las víctimas como un aspecto fundamental para asegurar la eficacia y dar sentido al trabajo de estas instituciones. Para poder conseguir hacer real ese objetivo de participación, la información con que cuentan las víctimas debería mejorar y deberían establecerse mecanismos destinados de forma específica a facilitarla. La práctica de la participación no sólo debe referirse a los aspectos legales de los derechos. También debe buscarse una participación de las víctimas a la hora de decidir cómo se quieren implementar esos derechos por medio de los enfoques psicosocial, antropológico, médico y político, entre otros.

## Independencia de los expertos y confianza en el sistema

Para las víctimas es de gran importancia poder confiar plenamente en la integridad e independencia de los expertos del sistema de derechos humanos de las Naciones Unidas. Por lo tanto se recomienda reforzar los mecanismos que garanticen la independencia del trabajo de los expertos, con respecto, a los estados, a las empresas y/o a los grupos de presión.

## Cultura de bienvenida y acceso al sistema

Para facilitar el acceso de las víctimas de violaciones de derechos humanos a la Oficina del Alto Comisionado para los Derechos Humanos, a los órganos de los tratados y a los procedimientos especiales, debiera de establecerse una "cultura de bienvenida". Para ello se recomienda implementar las siguientes propuestas:

## Cambios en la página web

- En la página web de la Oficina del Alto Comisionado para los Derechos Humanos se puede crear un enlace a manera de "bienvenida" que directamente pregunte: "¿Ha sufrido usted una violación a sus Derechos Humanos?"
- Seguidamente el menú de la página web debiera de guiar a la persona hasta un apartado en donde se informe en dónde están ubicadas las oficinas del Alto Comisionado para los Derechos Humanos, los datos de contacto de los órganos competentes y los procedimientos dentro del sistema de Naciones Unidas para cada problema específico.
- Se recomienda que el lenguaje en esta página web sea revisado por parte de representantes de víctimas, para garantizar su comprensión por parte de las personas que no están familiarizadas con la terminología empleada por los expertos en derechos humanos. Eso debiera estar traducido al menos en tres idiomas oficiales de la ONU.

## Organización de reuniones formales

- Para mejorar el acceso de las víctimas al sistema de Naciones Unidas, los comités y grupos de trabajo podrían organizar que las reuniones de trabajo sean en aquellos países de los cuales se está trabajando y de los cuales se tenga un especial interés conforme a la temática específica de derechos humanos del órgano respectivo.

- En cada sesión de comité o grupo de trabajo se debería llevar a cabo una reunión formal a puerta cerrada y de suficiente duración para hablar con representantes de las víctimas o con éstas directamente. Dichas reuniones deberían de tener lugar previamente a las reuniones con las autoridades, para contar con suficiente material informativo y estar suficientemente preparados con la información otorgada por las víctimas.
- Los expertos de las Naciones Unidas deberían de considerar la elección de un lenguaje claro y entendible tanto para el público en general como y especialmente para las víctimas y sus representantes.

#### Comunicación

- La comunicación directa entre las víctimas, el Alto Comisionado para los Derechos Humanos y los expertos independientes de los comités, grupos de trabajo y relatores especiales es crucial. Se recomienda revisar las posibilidades de establecer una comunicación directa online, vía correo electrónico, conferencias telefónicas u otras formas de diálogo en internet.
- Se recomienda, que mensaje de las víctimas o sus representantes al sistema de derechos humanos de Naciones Unidas sea contestado con una confirmación de su recepción.

#### Seguimiento

- Tomando en cuenta las realidades complejas en casos de violaciones a los derechos humanos, y de que parte de los mecanismos de impunidad conllevan a ocultar la identidad de los perpetradores, se recomienda, aun cuando se desconozca la identidad de los responsables directos, asumir una posible responsabilidad del Estado y proceder a un análisis de los casos presentados.
- El cumplimiento de las recomendaciones de los diferentes órganos de los tratados y de los procedimientos especiales en casos de violaciones a los derechos humanos debería ser monitoreado en cada fase y en todas las materias.

#### Protección

- La protección de víctimas y de testigos es un gran desafío para la ONU. Es importante que los órganos de tratados trabajen junto con otros orga-

nismos dentro y fuera de las Naciones Unidas en la búsqueda de protección para estos colectivos. La protección no debe reducirse a los dispositivos técnicos, sino que debe formar parte de una estrategia que debiera extenderse a las garantías de la no repetición. Las medidas propuestas deben tener en cuenta los factores de riesgo específicos y deben de ser siempre concebidas a partir de las conclusiones de las entrevistas con las víctimas previamente hechas. Debe de conocerse muy bien a las personas a las que se pretende proteger, así como también deben de evaluarse las condiciones prácticas en que se llevará a cabo dicha protección. Esto podría incluir mecanismos para supervisar las medidas acordadas de protección, y cuando sea posible en colaboración con el sistema de Naciones Unidas, ya sea en su oficinas localizadas en diversos países, o en las oficinas del Alto Comisionado y otras agencias.

- El sistema de derechos humanos de la ONU, y en particular la Oficina del Alto Comisionado para los Derechos Humanos, deben responder rápidamente y de manera pública a los casos de represalias. La publicación de un informe anual sobre las represalias o amenazas que sufren los miembros de la sociedad civil que llevan casos de violaciones de los derechos humanos en el sistema internacional es un instrumento importante. También se recomienda el seguimiento y la revisión constante (en reportes anuales) de estos casos de represalias.

#### Enfoques especiales que reflejen la situación de los grupos especialmente vulnerables

- Se recomienda que los comités, grupos de trabajo y relatores especiales incluyan en su trabajo un apartado especial que registren las violaciones sufridas por grupos de víctimas con vulnerabilidades específicas por diferentes condiciones de discriminación tales como los migrantes, mujeres y niños o pacientes psiquiátricos.

#### Capacitación

- Teniendo en cuenta la complejidad tanto del trabajo como del reparto de funciones dentro del sistema de Derechos Humanos de las Naciones Unidas, se recomienda que todos los expertos y el personal que trabaja para las diversas entidades, y para la Oficina del Alto Comisionado para los Derechos Humanos, reciban capacitación periódicamente.

- La capacitación debe de tener en cuenta las condiciones particulares y la vulnerabilidad de las víctimas y de los testigos, incluyendo los aspectos de género.
- La capacitación debe de incluir el significado de "la orientación a las víctimas". Es importante que tanto los expertos como las víctimas reflexionen sobre la tensión potencial que existe entre la orientación a éstas y el papel un tanto diplomático de los expertos.

#### **Recomendaciones a las representaciones locales de la Oficina del Alto Comisionado para los Derechos Humanos**

Las sedes de las oficinas locales en todo el mundo del Alto Comisionado para los Derechos Humanos son fundamentales para que en ellas se lleve a cabo una buena comunicación con las víctimas y sus representantes. Esto implica una coordinación entre las diferentes oficinas de campo y las oficinas en Ginebra. Se recomienda que estas oficinas locales dediquen una atención prioritaria a:

- la publicación de información sobre los distintos mecanismos de derechos humanos en el sistema de Naciones Unidas, tomando en cuenta un lenguaje accesible y los diferentes idiomas hablados en cada país con especial atención a las lenguas de pueblos indígenas;
- asesoría a las víctimas para la presentación de sus casos a los órganos pertinentes del sistema de Naciones Unidas;
- el seguimiento a las recomendaciones hechas por los comités, grupos de trabajo y relatores especiales;
- el acompañamiento a las personas y organizaciones que plantean casos ante el sistema de Naciones Unidas, sobre todo en la fase posterior a la presentación de los casos, incluyendo el uso de mecanismos de protección en caso necesario.

#### **Recomendaciones a las instituciones nacionales de derechos humanos**

Las instituciones nacionales de Derechos Humanos pueden participar en la aplicación de una política de orientación a las víctimas. Se recomienda:

- Dar seguimiento a la implementación de las recomendaciones hechas por las instancias internacionales en casos de violaciones de derechos humanos, monitoreando y estimulando su cumplimiento. Las instancias deberían incluir en sus informes anuales una evaluación del grado de cumplimiento de dichas recomendaciones y de los factores obstaculizadores del mismo.
- Establecer mecanismos de protección para víctimas y testigos de violaciones de derechos humanos de acuerdo con las propias víctimas y sus representantes.

#### **Recomendaciones a las organizaciones no-gubernamentales de derechos humanos**

Las Organizaciones no-Gubernamentales de derechos humanos juegan un papel importante y en ocasiones fundamental en el acompañamiento a las víctimas de violaciones de derechos humanos. Se les recomienda:

- Resaltar su papel de acompañantes en el deseo de éstas de hacerse escuchar; cuando representen a víctimas no debieran seguir su propia agenda.
- Informar a las víctimas de manera clara antes de llevar sus casos ante el sistema de derechos humanos de Naciones Unidas y mantener este nivel de comunicación con ellas durante toda la tramitación del caso ante estos organismos de derechos humanos.
- Asistir a grupos de víctimas especialmente vulnerables como mujeres, niños, migrantes, personas detenidas, pacientes de instituciones psiquiátricas o colectivos marginados por motivos de pobreza, idioma o cultura.
- Tener un enfoque prioritario en el empoderamiento y acompañamiento de las víctimas en la presentación y seguimiento ante instancias internacionales de derechos humanos.

## German

**Empfehlungen für die Umsetzung der Opfer-Orientierung in den Vertragsorganen und Sonderverfahren der Vereinten Nationen, dem Hochkommissariat für Menschenrechte, in staatlichen und Nationalen Menschenrechtsinstitutionen und in Nicht-Regierungsorganisationen**

Auf Einladung des Deutschen Instituts für Menschenrechte und des Nürnberger Menschenrechtszentrums trafen sich am 29. und 30. September 2014 Mitglieder von Vertragsorganen der Vereinten Nationen und von Sonderverfahren, unabhängige Experten und Vertreter von Nicht-Regierungsorganisationen aus Afrika, Asien, Amerika und Europa in Berlin, um die Bedeutung und Umsetzung der Grundsätze von Opfer-Orientierung in verschiedenen Arbeitsfeldern für den Schutz der Menschenrechte zu diskutieren.

Die Teilnehmer reflektierten über die Entwicklung der Opfer-Orientierung im System der Vereinten Nationen, die Herausforderungen der Implementierung und die Erwartungen der Opfer gegenüber den Abteilungen und Institutionen des UN-Hochkommissariats für Menschenrechte.

**Empfehlungen an die Vertragsorgane und Sonderverfahren der Vereinten Nationen und das Hochkommissariat für Menschenrechte**

Die Beteiligung der Opfer von Menschenrechtsverletzungen ist in zahlreichen Verträgen und Erklärungen als Schlüssel für die Wirksamkeit und die Bedeutung dieser Abkommen/Arbeit erwähnt. Um diesen Diskurs umzusetzen, müssen Opfer ihre Möglichkeiten kennen, und es müssen spezifische Maßnahmen, die die Teilnahme erleichtern, eingerichtet werden. Die Beteiligung umfasst nicht nur die rechtlichen Aspekte, sondern auch die Gewährleistung der psychosozialen, anthropologischen, medizinischen, politischen und sonstigen Bedingungen für die Wahrnehmung dieser Rechte.

**Die Unabhängigkeit der Experten und das Vertrauen in das System**

Für die Opfer von Menschenrechtsverletzungen ist es von großer Bedeutung, voll und ganz in die Integrität und Unabhängigkeit der Experten des Menschenrechtssystems der Vereinten Nationen vertrauen zu können. Deshalb wird empfohlen, Mechanismen zu

entwickeln, die sicherstellen, dass vorgeschlagene und gewählte Experten völlig unabhängig von Staaten, Unternehmen und Lobbyisten sind.

**Willkommenskultur und der Zugang zum System**

Um den Zugang der Opfer zum UN-System zu erleichtern, sollten das Hochkommissariat für Menschenrechte, die UN-Vertragsorgane und Sonderverfahren eine „Willkommenskultur“ etablieren. Eine solche Kultur des Willkommens soll Genderaspekte gezielt berücksichtigen. Im Einzelnen wird empfohlen, folgende Vorschläge umzusetzen:

**Anpassungen auf der Internetseite**

- Auf der Internetseite des Hochkommissariats für Menschenrechte soll eine Schaltfläche mit der Frage eingerichtet werden: „Haben Sie eine Menschenrechtsverletzung erlitten?“
- Das anschließende Menü auf der Internetseite sollte die Person durch das System der Vereinten Nationen leiten, die lokalen Büros des Hochkommissariats für Menschenrechte vorstellen, die direkt kontaktiert werden können, sowie die Organe und einschlägigen Verfahren innerhalb des Systems der Vereinten Nationen für jedes spezifische Problem.
- Um sicherzustellen, dass die Sprache der Internetseite auch für jene verständlich ist, die mit der Terminologie von Menschenrechtsexperten nicht vertraut sind, sollen Opfer und ihre Vertreter diese überprüfen. Dies soll zumindest in drei der offiziellen UN-Sprachen geschehen.

**Sitzungen**

- Um den Zugang der Opfer von Menschenrechtsverletzungen zum System der Vereinten Nationen sicherzustellen, könnten die Vertragsorgane und Sonderverfahren Sitzungen und/oder informelle Treffen in dem Land abhalten, das für das spezifische Thema und den jeweiligen Menschenrechtsmechanismus von besonderer Bedeutung ist.
- Vertragsorgane/Sonderverfahren sollten während jeder Sitzung ein privates Treffen mit Opfern oder ihren Vertretern einplanen. Dieses Treffen muss von ausreichender Dauer und mit Übersetzung sein. Diese Treffen mit der Zivilgesellschaft sollten vor dem Treffen mit Regierungsvertretern stattfinden.

den, um die Erfahrungen der Opfer angemessen berücksichtigen zu können.

- Die Experten der Vereinten Nationen sollten sich in einer Weise ausdrücken, die der allgemeinen Öffentlichkeit und insbesondere den Opfern und ihren Vertretern verständlich ist.

#### Kommunikation

- Die direkte Kommunikation zwischen Opfern, dem Hochkommissariat für Menschenrechte und den unabhängigen Sachverständigen der Vertragsorgane und Sonderverfahren ist von zentraler Bedeutung. Es sollte überprüft werden, wie eine direkte Kommunikation per E-Mail, Telefonkonferenzen oder anderen Formen des Dialogs über das Internet etabliert werden kann.
- Es wird empfohlen, dass jede Korrespondenz und Kommunikation, die Opfer und ihre Vertreter an die UN-Menschenrechtsmechanismen senden, sofort mit einer Empfangsbestätigung beantwortet wird.

#### Weiterverfolgung

- Unter Berücksichtigung der komplexen Sachlagen im Fall von Menschenrechtsverletzungen und aufgrund der Tatsache, dass einige der Mechanismen von Straflosigkeit auf der Verschleierung der Identität der Täter basieren, wird empfohlen, in Zweifelsfällen bezüglich der staatlichen Verantwortung bis zum Beweis des Gegenteils die Fälle anzunehmen und zu verfolgen.
- Die Umsetzung der von den Vertragsorganen und Sonderverfahren ausgesprochenen Empfehlungen in Fällen von Menschenrechtsverletzungen sollte in allen Phasen und Aspekten überwacht werden.

#### Schutz

- Der Schutz von Opfern und Zeugen ist eine große Herausforderung für die Vereinten Nationen. Es ist wichtig, dass die Vertragsorgane und Sonderverfahren mit anderen Organisationen der Vereinten Nationen und weiteren Institutionen zum Schutz für die betroffenen Gruppen zusammenarbeiten. Sicherheit darf dabei nicht auf technische Aspekte reduziert werden, sondern muss Teil einer umfassenden Strategie unter Berücksichtigung der Garantien der Nichtwiederholung sein. Die

vorgeschlagenen Maßnahmen sollten alle Risikofaktoren berücksichtigt und immer unter Beteiligung der betroffenen Personen ausgearbeitet und umgesetzt werden. Die tatsächlichen Lebensbedingungen, unter welchen die Sicherheitsmaßnahmen umgesetzt werden, sind zu berücksichtigen. Die Maßnahmen können auch die Überwachung der vereinbarten Schutzmaßnahmen durch Büros des Hochkommissariats für Menschenrechte oder anderer UN-Büros beinhalten.

- Das UN-Menschenrechtssystem als Ganzes und insbesondere das Hochkommissariat für Menschenrechte sollten umgehend und öffentlich auf Fälle von Repressalien reagieren. Die Veröffentlichung eines Jahresberichts über die Repressalien und Drohungen gegen zivilgesellschaftliche Akteure, die den Vereinten Nationen Fälle von Menschenrechtsverletzungen mitgeteilt haben, ist ein wichtiges Instrument. Es wird auch empfohlen, dass der Verlauf diese Fälle von Repressalien jährlich überprüft wird.
- Berücksichtigung der besonderen Situation benachteiligter Gruppen.
- Es wird empfohlen, dass die Vertragsorgane und Sonderverfahren sich in ihren Berichten mit den Menschenrechtsverletzungen an Personen, die aufgrund unterschiedlicher Bedingungen von Diskriminierung besonders gefährdet sind, wie beispielsweise Migranten, psychiatrische Patienten, indigene Völker, Kinder und Frauen, explizit auseinandersetzen.

#### Fortbildung

- Unter Berücksichtigung der Komplexität der Arbeit und den verschiedenen Funktionen innerhalb des Menschenrechtssystems der Vereinten Nationen wird empfohlen, dass alle Experten und Mitarbeiter der verschiedenen UN-Institutionen und des Hochkommissariats für Menschenrechte regelmäßig Weiterbildungen erhalten.
- Die Fortbildung muss die besonderen Bedingungen und die spezifischen Empfindsamkeiten der Opfer und Zeugen, sowie geschlechtsspezifische Aspekte, berücksichtigen.
- Die Fortbildung soll ein Verständnis über die Bedeutung von Opfer-Orientierung vermitteln. Experten, aber auch Opfer, sollen auch über das

Spannungsverhältnis zwischen Opfer-Orientierung und der quasidiplomatischen Rolle der Experten reflektieren.

#### **Empfehlungen für die lokalen Büros des Hochkommissariats für Menschenrechte:**

Die regionalen Büros und Außenstellen des Hochkommissariats für Menschenrechte sind der Schlüssel zur Kommunikation mit den Opfern und ihren Vertretern. Dazu ist eine gute Koordination zwischen den verschiedenen Außenstellen und den Büros in Genf notwendig. Es wird empfohlen, dass die lokalen Büros des Hochkommissariats für Menschenrechte folgende Themen vorrangig bearbeiten:

- Die Veröffentlichung von Informationen über die verschiedenen Menschenrechtsmechanismen im System der Vereinten Nationen. Dies sollte in einer verständlichen Sprache geschehen, neben der Landessprache auch in sonstigen in den einzelnen Ländern gesprochenen Sprachen, mit besonderer Berücksichtigung der indigenen Sprachen.
- Die Beratung für Opfer, die ihre Fälle den zuständigen Mechanismen zum Schutz der Menschenrechte innerhalb des Menschenrechtssystems der Vereinten Nationen vorlegen.
- Die Überwachung der Umsetzung der Empfehlungen der Vertragsorgane und Sonderverfahren.
- Die Begleitung von Personen und Organisationen, die Fälle vor Organen der Vereinten Nationen anzeigen, insbesondere in der ersten Phase nach der Übergabe der Fälle. Gegebenenfalls sind dabei auch Schutzmechanismen und Unterstützungsmaßnahmen für die Betroffenen einzusetzen.

#### **Empfehlungen an Nationale Menschenrechtsinstitutionen**

Nationale Menschenrechtsinstitutionen können auf verschiedenen Ebenen zu einer Politik der Opferorientierung beitragen. Sie sollten:

- Die Umsetzung der Empfehlungen von internationalen Mechanismen in Fällen von Menschenrechtsverletzungen überwachen und in ihren Jahresberichten eine Bewertung über den Grad und Hindernisse der Umsetzung darstellen.
- Gemeinsam mit den Opfern und ihren Vertretern geeignete Mechanismen zum Schutz für Opfer und Zeugen einrichten.

#### **Empfehlungen für Nicht-Regierungs- und zivilgesellschaftliche Organisationen:**

Nicht-Regierungs- und zivilgesellschaftliche Organisationen übernehmen wichtige Funktionen, und manchmal ist die Begleitung der Opfer durch sie von entscheidender Bedeutung. Sie sollten:

- Ihre Funktionen in der Begleitung von Opfern von Menschenrechtsverletzungen hervorheben und diesen Gehör verschaffen; in der Vertretung von Opfern haben deren Interessen Priorität vor allen anderen Interessen.
- Die Opfer deutlich und ausführlich informieren, bevor ihre Fälle an die Vereinten Nationen weitergeleitet werden. Während der gesamten Zeit, in der der Fall von den entsprechenden internationalen Instanzen behandelt wird, müssen die vertretenden zivilgesellschaftlichen Organisationen in ständiger Kommunikation mit den Opfern stehen.
- Besonders gefährdete Opfergruppen wie Frauen, Kinder, indigene Völker, Migranten, Häftlinge, Patienten in psychiatrischen Einrichtungen oder Gruppen, die aufgrund von Armut, Sprache oder Kultur marginalisiert sind, vorrangig unterstützen.
- Bei der Einreichung und Verfolgung der Fälle vor internationalen Menschenrechtsgremien die Opfer vorrangig stärken und unterstützen.





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